

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN MELENDEZ, et al.,

Plaintiffs,

v.

WARDEN ROSEMARY NDOH,

Defendant.

No. 1:20-cv-01393-ADA-CDB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT DISMISSING PLAINTIFFS
JOHN MELENDEZ, JUSTICE DILLON
PAJARILLO, JOSE CANALES, JR., PEDRO
CASTRO, EMERSON GAITAN, CARLOS
ESPINOZA, ERIC HERNANDEZ, AND
DANIEL GARCIA WITHOUT PREJUDICE

(ECF Nos. 37, 51)

On April 24, 2023, the assigned Magistrate Judge issued findings and recommendations to dismiss Plaintiffs John Melendez, Justice Dillon Pajarillo, Jose Canales, Jr., Pedro Castro, Emerson Gaitan, Carlos Espinoza, Eric Hernandez, and Daniel Garcia for failure to exhaust administrative remedies. (ECF No. 51.) The Court served the findings and recommendations on Plaintiffs and provided fourteen (14) days for the Plaintiffs' to file objections thereto. (*Id.*) On May 7, 2023, Plaintiffs timely filed objections. (ECF No. 52.) On May 19, 2023, Defendants replied. (ECF No. 57.)

In their objections, Plaintiffs argue they should not be dismissed from this case merely because they "failed to engage in or complete a futile three-tier 'appeals' process that could not provide them with any meaningful relief." (ECF No. 52 at 1.) Plaintiffs argue Defendant carries

1 the burden of proof prior to demonstrate “the prisoner[s] did not exhaust a *remedy* that was
2 *available* to the inmate.” (*Id.* at 3.) Plaintiffs argue that because the ““exhaustion requirement
3 hinges on the availab[ility] of relief,”” Plaintiffs should not be dismissed for failure to exhaust
4 non-existent administrative remedies. (*Id.*) Plaintiffs, essentially, argue that because Defendant
5 has failed to make available the relief they seek, Defendant has failed to provide any remedy.

6 Defendant argues “it is undisputed that Plaintiffs . . . failed to exhaust available
7 administrative remedies for their claims.” (ECF No. 57.) Defendant argues “the administrative
8 grievance process was capable of providing the Non-Moving Plaintiffs with some sort of relief,
9 even if not the specific monetary relief they demanded.” (*Id.*) Thus, Defendant argues, Plaintiffs’
10 objections are “immaterial.” (*Id.*)

11 Defendants are correct. (ECF No. 51 at 2 (citing Fed. R. Civ. P. 56(a); *Washington*
12 *Mutual Inc. v. United States*, 636 F.3d 1207, 1216 (9th Cir. 2011) (“Summary judgment is
13 appropriate where there is ‘no genuine dispute as to any material fact and the movant is entitled to
14 judgment as a matter of law.’”)). Plaintiffs state they forwent the requisite administrative
15 procedure because it could not provide monetary relief; however, the case law does not require
16 the type of relief sought be available—only that some relief is available and exhausted. *See* 42
17 U.S.C. § 1997(e) (“No action shall be brought with respect to prison conditions . . . by a prisoner
18 confined in any jail, prison, or other correctional facility until such administrative remedies as are
19 available are exhausted.”). Exhaustion requires Plaintiffs to pursue even those remedies that may
20 not fully address the harm they endured. *See Booth v. Churner*, 532 U.S. 731 (2001) (“an inmate
21 seeking only money damages must complete any prison administrative process capable of
22 addressing the inmate’s complaint and providing some form of relief, even if the process does not
23 make specific provision for monetary relief.”) Therefore, Plaintiffs’ objections are unpersuasive.

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1 According to 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de novo* review of this
2 case. Having carefully reviewed the entire file, including Plaintiffs' objections, the Court
3 concludes the findings and recommendations are supported by the record and by proper analysis.

4 Accordingly, IT IS SO ORDERED:

- 5 1. The findings and recommendations issued on April 24, 2023 (ECF No. 51), are
6 ADOPTED in full;
- 7 2. The Court GRANTS Defendants' Motion for Summary Judgment (ECF No. 37);
- 8 3. Plaintiffs John Melendez, Justice Dillon Pajarillo, Jose Canales, Jr., Pedro Castro,
9 Emerson Gaitan, Carlos Espinoza, Eric Hernandez, and Daniel Garcia are
10 DISMISSED WITHOUT PREJUDICE;
- 11 4. The Clerk of Court is directed to terminate the dismissed plaintiffs from this case; and
- 12 5. This action shall proceed on claims by remaining Plaintiffs Freddy Anthony Mendoza
13 and Salvador Salazar.

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16 IT IS SO ORDERED.

17 Dated: September 4, 2023


UNITED STATES DISTRICT JUDGE